

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Streamlining Deployment of Small Cell	)	WT Docket No. 16-421
Infrastructure by Improving Wireless Facilities	)	
Siting Policies	)	
	)	
Mobilitie, LLC Petition for Declaratory Ruling	)	

**COMMENTS OF CITY OF HENDERSON, NEVADA**

These Comments are filed by City of Henderson, Nevada ("Henderson" or "City") in response to the Public Notice, released December 22, 2016, in the above-entitled proceeding.

**I. INTRODUCTION**

When Henderson was officially incorporated on April 16, 1953, it had a population of 7,410 and consisted of approximately 13 square miles. The City quickly began to grow and flourish, and today the City has grown to more than 103 square miles, is the second largest city in Nevada, and has a population of 302,000. Henderson occupies the southern rim of the Las Vegas Valley stretching east of Boulder Highway to just east of Interstate 15. Features include level desert, access to the Colorado River, Lake Mead, and Sloan Canyon National Conservation area, along with Black Mountain and the River and McCullough Mountains.

The City's official slogan "Henderson-a Place to Call Home" reflects a community that enjoys small town values while benefiting from big city efficiencies. Henderson is proud of the master-planned residential areas, progressive business development, police and fire services, new roads and public works projects, and schools. We have more than 180 linear miles of bicycle and pedestrian trails and a nationally recognized, award-winning parks and recreation system.

As Henderson continues to grow and change, different needs emerge and we must continually chart a new direction to successfully adapt and continue to thrive. Key to achieving this is citywide planning built on a strong foundation of research and community engagement that promotes Henderson's vision, long-term goals, and objectives, including an enriched quality of life through improved community services, education and jobs, greater job opportunities and a robust economy, revitalized neighborhoods and an enhanced downtown, diverse housing options through wise development choices, and a healthy environment with plenty of parks and open space.

Henderson urges the Commission to exercise caution as it works to enable the widespread deployment of small cell infrastructure throughout the nation. Henderson opposes a federal one-size-fits all preemption of local siting and property-management authority and asks the Commission to consider carefully the many differences between communities that necessitate local decisions: variation in state statutes and city charters, geographic challenges, climate variations, size, budgetary and staff resources, aesthetic character, the type and amount of existing infrastructure, neighborhood character, and more. We ask the Commission to avoid placing any further restrictions on cities as we collaborate with our local wireless carriers and infrastructure providers to integrate this technology, and very new approach to infrastructure development, into our planning, zoning, and right-of-way management processes in a way that preserves and protects the finite rights of way that are of significant concern to our residents and impact them on a daily basis and balances the needs of the City, our residents, providers of telecommunications service, and other interested parties that have a need to use our rights of way, including providers of natural gas, electricity, water, sewer, and ambulance services.

The City has reviewed and approved two small-cell networks within Henderson, both in residential areas where large macro towers would have been difficult for the provider to site. Recently, we have had a number of providers exploring “small cell” installations. The proposed installations have varied from 25 foot tall street light poles to 120 foot poles. All of these proposals have been for installation within the City’s right-of way. One provider, Mobilitie has notified the City of its intent to submit applications for transport poles/“macro cell” towers and small cell poles/“mini-macro cell” towers 70 feet in height within the public right of way. The City does not believe Mobilitie has made an effort to identify or explain any gaps in coverage or why these poles cannot be located outside the public right of way, and instead it appears Mobilitie has focused on the deployment of an entire network of poles within the right of way.

## **II. HENDERSON’S PRACTICES DO NOT PROHIBIT OR HAVE THE EFFECT OF PROHIBITING PROVISION OF SERVICE**

Unfortunately, Mobilitie’s recent proposal is part of a disturbing trend of industry repeatedly asking regulators for preemption of local authority even though the record does not support their contention that local governments are “barriers to entry” and “barriers to deployment.”

The Henderson Development Code (“Development Code”) allows for the deployment of wireless infrastructure so long as that infrastructure meets minimum criteria for safety, of identifying power sources, of coordinating pavement trenching for backhaul communications, and of ensuring reasonable camouflaging to maintain the aesthetic that our residents have invested in. The Development Code is available online at <http://www.cityofhenderson.com/docs/default-source/community-development-docs/development-code/chapter-19-revised-2-21-17-with-cover-page.pdf?sfvrsn=62> (location as March 7, 2017). The City prefers collocation to reduce costs, reduce potential violations of the Americans with Disabilities Act (ADA), reduce proliferation of poles and equipment, and ensure the orderly development of the City. Under these considerations and to maximize the use of City rights of way, the number of distributed antenna system (DAS) attachments to City street light poles is not limited. To date, the City has 4 macro-cell towers and 70 wireless antenna

deployments in the public right-of-way; and, for purposes of processing these under the Development Code, the approval process at the staff level was completed within 60 days or less.

With regard to site selection, Henderson does not plan or designate cell sites. The siting is chosen by the providers where they state they need coverage. Most of the applications the City has received in the last year are to fill in gaps or to update/replace existing equipment. To process such applications, Henderson incurs expenses for the following: engineering design review, planning review, and, if the applicant wishes to use City right of way, right of way review to determine availability, ownership, restrictions and conflicts. At permit issuance, the City will also have a number of inspections to ensure safe electrical connection, proper traffic control, sidewalk and street patching. If the City authorizes the use of its right of way or a street light pole for a wireless installation, it has the ongoing expense of managing the wireless use agreements and use of City rights of way throughout the term, including determining compliance with the terms of the agreement, coordinating any relocations, enforcing maintenance obligations, identifying unauthorized installations, auditing applicable financial obligations, and processing invoices and accounts receivable.

Notwithstanding the costs and resource expenditures associated with these requirements, Henderson must navigate a complex, evolving state and federal regulatory framework. From a planning, development, and zoning perspective, the Spectrum Act has been most problematic. Providers have attempted to exploit the Spectrum Act by submitting requests for structures to exceed the presumptive height limitation in the Development Code then later arguing that they are entitled to an administrative approval of 10 feet above the previously-approved height. This takes away the ability of local jurisdictions to protect the health, safety and welfare, and aesthetic integrity of their community because an increase in tower height may not be appropriate in certain areas. Additionally, the pole extensions may cause structural overload conditions because the original installations generally do not contemplate additional weight and height and/or the footings and bases are undersized.

### **III. CITIES HAVE A PUBLIC DUTY TO POLICE THE RIGHTS OF WAY**

Henderson reviews all applications to install wireless communication facilities (macro and small-cell) to ensure they are compatible with the area, as well as screened/camouflaged to the maximum extent possible. Henderson has recently experienced an increase in the requests for small cell sites within City right of way. Staff wants to ensure that the facilities are appropriately scaled and located while balancing the interests of the residents and the provider. During the entitlement process, staff requests line-of-sight analysis to determine if a proposed cell facility will create a public safety issue by interfering with the City's communication network for its water and sewer utility sites. Engineering reviews for structural and electrical issues are evaluated as part of the entitlement process.

Mobilitie's recent proposed installations (again, within the City's right-of-way) have varied widely from four stealth antennas on existing street light poles to 38 monopoles with some originally proposed to be 120 feet in height and reduced to 70 feet in height and a handful ranging from 23 to 45 feet in height. Street light poles and antenna poles designed to mimic

street light poles generally fit physically and aesthetically (with camouflaging) in the right of way. Where conflicts with vehicles are request or road departures are high, break away bases can be used to make crashes less deadly. As pole height goes up the bases are less likely to fit in the right of way and breakaway bases do not exist. That drives up the construction and maintenance cost. Crash attenuators/cushions are expensive and large, further complicating the construction within the right of way and defeating the City's aesthetic objectives. Further, regarding wireless communications equipment installed within the public right-of-way, Henderson requires all above-ground equipment pedestals be placed outside of the right-of-way. All ground equipment located within the right-of-way must be placed underground. All of these requirements by the City are designed to maximize health, safety, and welfare concerning use of the right-of-way and Henderson has worked hard to strike the appropriate balance of utilizing the right-of-way to deliver important public services. Mobilitie's proposals to deploy a network of poles in City rights of way disregard the important responsibility Henderson has to manage the right-of-way for not only the benefit, but the safety, of its residents.

#### **IV. CITIES ARE WORKING PROACTIVELY TO DEPLOY WIRELESS INFRASTRUCTURE AND ARE DOING SO IN AN EFFICIENT AND COST EFFECTIVE MANNER**

Henderson recognizes the benefits of wireless service to all citizens, businesses and visitors within our community. Commercial businesses continue to demand faster, higher capacity service and cite communication networks as a key determining factoring when looking to move to Henderson. We are also working to improve educational opportunities, and access to communication networks are a key to opening the world right from our schools and homes. We also see the future of transportation as being increasingly tied to communication systems as autonomous and connected vehicle technologies are deployed in Southern Nevada.

Local control is necessary to accommodate this growth and to take advantage of existing infrastructure, while also ensuring that corridors exist for power, gas, water, sewer and the host of communications operators and others that presently utilize and rely on our public rights of way.

Moreover, Henderson already facilitates the deployment of wireless infrastructure in a speedy and cost effective manner. Recent micro-cell (including small cell networks) requests have been processed administratively where possible and often within 45 days. The length of time is usually more dependent on how quickly a provider responds to staff comments and provides complete information than on the time it takes staff to process applications. Mobilitie's proposal, with its 70 foot tall macro cell towers within the public right of way, seeks to deviate from the efficient processes Henderson has utilized to encourage cell deployment. Because Mobilitie's proposal is such a gross departure from what cities have had to deal with in the past, it should not be subject to an expedited process.

The City revised its Development Code to allow more structures to be approved administratively as long as the structures comply with the set standards. Only when structures require deviations from the standards, would a public hearing process be required. To ensure complete

understanding of the City's processes, Henderson requires a pre-application meeting prior to submittal of an entitlement which allows staff and the provider to discuss concerns and comments prior to submittal.

To further reduce costs, delays, and administrative burdens, Henderson has implemented processes that permit providers to upgrade their facilities administratively where the upgrades are "like for like." These updates have been approved by staff within a few days and allow providers to go to permitting much faster. These processes provide clarity for the City and the providers and facilitate efficient deployment.

With regard to fees, the City's current entitlement fees include a set one-time fee, and a set fee for processing the entitlement application. Building permit fees may vary and are dependent upon the cost of the structure. Such fees are set to recover the time spent by staff reviewing the permit and performing initial reviews, inspections, dig coordination, and conflict review of nearby projects. The current recurring fee for use of the right of way was based on past appraisals and comparison to similar entities with fee ordinances.

The City has set a licensed location rental fee for use of the right of way at \$200 a month or \$2,400 a year. The recurring fees cover the City's costs of managing the additional use and occupation of the right of way, managing the wireless use agreements throughout the term, including extensions, compliance with the terms of the agreement, auditing applicable financial obligations, processing invoices and accounts receivable, other applicable reviews and inspections, and records management and retention.

## **V. INDUSTRY SHOULD DO MORE VOLUNTARILY TO IMPROVE WIRELESS SITING**

Henderson has recently experienced pressure from providers regarding height of structures without providing reasoning and/or documentation supporting the need for the height. Providers are also beginning to display a reluctance to camouflage. Additionally, the City commonly asks for propagation maps to show the need for a facility at a proposed location and height and some providers have been reluctant at times to give this information to the City. Providers have also begun to put off maintenance and repairs at cell facilities when the camouflaging elements have been damaged by wind, or deterioration, and at few locations in Henderson, facilities have even been abandoned but the structures have not been removed. The City has also experienced instances where the actual equipment installations do not match the design presented at the time of application.

These push-backs and neglect are unfortunate and demonstrate a lack of commitment on the part of some providers. They also demonstrate that providers can view siting as a one-sided business investment, rather than as a commitment to the community to which they are providing service. Through improved siting, these impacts can be minimized. Proper siting can reduce the instances of unmaintained facilities and can prevent the need for the unnecessary over-proliferation of sites.

**VI. INDUSTRY SHOULD BE REQUIRED TO PAY COMMUNITIES JUST COMPENSATION FOR USE OF RIGHTS AWAY AND TO REMOVE THEIR FACILITIES WHEN THEY ARE NO LONGER IN USE**

By undervaluing real property in cities' rights of way, industry is encouraged to relocate wireless facilities from macro sites that are currently located on private property or publicly-owned property onto new poles sited in rights of way. In addition, there is no obligation on industry to collocate their facilities or open up poles they install to other providers of telecommunications service. Undervaluing the property value of the right of way will lead to an increase in the proliferation of poles and equipment in the rights of way, undermine Henderson's ability to ensure the orderly development of Henderson, and not allow the City to maximize the use of the rights of way. The City has already started to experience this with Mobilitie, and it is just one provider.

On January 9, 2017, Mobilitie submitted a Concept Plan Review to the City, seeking comments on locating five cell monopoles/towers within the public right of way. Some of those applications included locations outside of the right of way or were for structures that did not comply with the Development Code. Since that initial review, Mobilitie has expressed their desire to submit formal applications for four stealth antennas on existing street light poles and 38 new monopoles/towers in City right of way that are mostly 70 feet in height with only two less than 70 feet in height. Although the City and Mobilitie have been working cooperatively on the review as part of the entitlement process, the City is also obligated to manage its rights of way and should not be required to allow pole farms be deployed and spread throughout City rights of way when several other options are available to providers of telecommunications services, like Mobilitie, including locating the poles on private property (or on available and compatible City property) and deploying antennas and equipment on existing structures and poles inside or outside the right of way. This is particularly concerning given the requirement that the City manage use of its rights of way on a nondiscriminatory basis.


Given how quickly the technology is changing, cities could in the not too distant future be stuck with hundreds if not thousands of obsolete poles (inside and outside the right of way), antennas and other paraphernalia on street lights, poles and buildings, with countless obsolete cables buried under streets and sidewalks. The cost of removing such facilities and doing so in a timely manner should be borne by industry.

## VII. CONCLUSION

Henderson would like to thank the Commission for its efforts to better understand the work being done at the local government level to ensure safe, responsible deployment of wireless infrastructure, particularly that built in the public rights of way. We strongly urge the Commission to consider our comments, as well as those submitted by communities across the country, before taking any action that may adversely affect and otherwise cripple the authority and ability of local governments to manage valuable public property, protect public safety, and preserve the aesthetic appeal of our communities.

Respectfully submitted,

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